

BEFORE THE
POLLUTION CONTROL HEARINGS BOARD
STATE OF WASHINGTON

IN THE MATTER OF)
ASARCO, INCORPORATED,)
Appellant,)
v.)
PUGET SOUND AIR POLLUTION)
CONTROL AGENCY,)
Respondent.)

PCHB No. 880-A

FINAL FINDINGS OF FACT,
CONCLUSIONS OF LAW
AND ORDER

THIS MATTER, the appeal of two \$250 civil penalties for allegedly causing or permitting concentrations and frequencies of SO₂ in excess of the five minute standard of Section 9.07(a) of Regulation I, having come on regularly for formal hearing on the 20th day of February, 1976 in Lacey, Washington, before the Pollution Control Hearings Board, W. A. Gissberg, presiding and Walt Woodward (reading the record), and appellant American Smelting and Refining Company, Inc. appearing through its attorney, Ronald A. Roberts, and respondent Puget Sound Air Pollution Control Agency appearing through its attorney, Keith D. McGoffin; and the

1 Board having entered on the 18th day of March, 1976 its proposed Findings
2 of Fact, Conclusions of Law and Order; and the Board having served said
3 proposed Findings, Conclusions and Order upon all parties herein by
4 certified mail, return receipt requested and twenty days having elapsed
5 from said service; and

6 The Board having received no exceptions to said proposed Findings,
7 Conclusions and Order; and the Board being fully advised in the premises;
8 now therefore,

9 IT IS HEREBY ORDERED, ADJUDGED AND DECREED that said proposed
10 Findings of Fact, Conclusions of Law and Order, dated the 18th day of
11 March, 1976, and incorporated by reference herein and attached hereto
12 as Exhibit A, are adopted and hereby entered as the Board's Final
13 Findings of Fact, Conclusions of Law and Order herein.

14 DONE at Lacey, Washington, this 23d day of April, 1976.

15 POLLUTION CONTROL HEARINGS BOARD

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17 W. A. GISSBERG, Member

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19 WALT WOODWARD, Member
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BEFORE THE
POLLUTION CONTROL HEARINGS BOARD
STATE OF WASHINGTON

IN THE MATTER OF
AMERICAN SMELTING AND REFINING
COMPANY, INC.,

Appellant,

v.

PUGET SOUND AIR POLLUTION
CONTROL AGENCY,

Respondent.

PCHB No. 880-A

FINDINGS OF FACT,
CONCLUSIONS OF LAW
AND ORDER

Nature of Case: Two \$250 civil penalties for allegedly causing or
permitting concentrations and frequencies of SO₂ in
excess of the five minute standard of Section 9.07(a)
of Regulation I.

Formal Hearing: February 20, 1976, Lacey, Washington.

Board Member Present: W. A. Gissberg, presiding.

Board Member Reading the Record: Walt Woodward.

Court Reporter: Robert H. Lewis.

For Appellant: Ronald A. Roberts of Eisenhower, Carlson, Newlands,
Reha, Elliott & Henriot, attorneys.

EXHIBIT A

1 For Respondent: Keith D. McGoffin of Burkey, Marsico, Roval,
2 McGoffin, Turner and Mason, attorneys.

3 FINDINGS OF FACT

4 1. Pursuant to RCW 43.21B.260, respondent has filed a certified
5 copy of its Regulation I which we notice. Section 9.07(a) of
6 Regulation I provides that:

7 It shall be unlawful for any person to cause or permit the
8 emission of sulfur dioxide from any premises which will result
9 in concentrations and frequencies at a primary air mass station,
a primary ground level monitoring station, or a special station
that exceed those shown in the following table:

10

11 <u>*Concentration</u>	12 <u>Averaging</u> <u>Time</u>	13 <u>Frequency of</u> <u>Occurrence</u>
14 1.0 ppm	5 minutes	Once in any 8 consecutive hours

15

16 *Parts per million by volume

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18 Section 3.29 provides for a civil penalty of up to \$250 per day
for each violation of Regulation I.

19 2. The material facts in these matters are not in dispute. On
20 March 29, 1975, at its plant in Tacoma, Washington, appellant
21 caused or permitted concentrations and frequencies of SO₂ in excess
22 of 1.0 ppm for five (5) minutes, two times in eight consecutive hours.
23 For each violation of the standard, respondent issued a civil penalty
24 of \$250. [Civil Penalty Nos. 2040 and 2041.]

25 3. On January 12, 1972, by Resolution 136, Puget Sound Air Pollution
26 Control Agency (PSAPCA) granted to appellant a variance from the five
27 FINDINGS OF FACT,
CONCLUSIONS OF LAW AND ORDER

1 minute standard of Section 9.07(a). The variance was to expire on
2 January 31, 1976 and required the construction of an SO₂ plant by
3 January 31, 1974. [Resolution 136, January 12, 1972.]

4 4. Because of delays, PSAPCA granted appellant an extension of
5 time for it to complete construction and shakedown of the SO₂ plant
6 to April 30, 1974. The expiration date of the variance, however, was
7 unaffected and the section dealing with the five minute standard of
8 Section 9.07(a) remained substantially the same. [Resolution 226,
9 December 12, 1973.]

10 5. After construction appellant experienced operational problems
11 and requested an extension of the compliance schedule for shakedown
12 from April 30, 1974 to June 30, 1974. Other provisions of the variance
13 remained unaffected. Because it appeared that a further compliance
14 schedule extension was necessary, PSAPCA directed that its staff
15 publish notice for the purpose of granting an extension beyond
16 June 30 to July 31, 1974. [Resolution 249, May 16, 1974.]

17 6. Thereafter on June 20, 1974, PSAPCA granted appellant's
18 compliance schedule extension, but in doing so, drafted its Resolution
19 in a manner which purported to change the termination date of the
20 variance from the five minute standard of Section 9.07(a) to July 31,
21 1974 without prior notice thereof to appellant. [Resolution 252,
22 Section 1, June 20, 1974.] However, the expiration date of the entire
23 variance remained the same, i.e., January 31, 1976. [Resolution 252
24 Section 1, Condition 2, June 20, 1974.]

25 CONCLUSIONS OF LAW

26 1. After considering the variance as a whole, and all amendments

27 FINDINGS OF FACT,
CONCLUSIONS OF LAW AND ORDER

1 thereto, we are convinced that the variance from the five minute
2 standard of Section 9.07(a) granted by PSAPCA was in full force and
3 effect during the times of the alleged violations herein.

4 2. There being a variance in effect, appellant did not unlawfully
5 violate Regulation I and no civil penalties should have been issued.

6 3. Both \$250 civil penalties should be vacated.


7 ORDER

8 1. The civil penalty assessed in No. 2040 for \$250 is vacated
9 and the matter is dismissed.

10 2. The civil penalty assessed in No. 2041 for \$250 is vacated
11 and the matter is dismissed.

12 DONE at Lacey, Washington this 18th day of March, 1976.

13 POLLUTION CONTROL HEARINGS BOARD

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15 W. A. GISSBERG, Member

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17 WALT WOODWARD, Member

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27 FINDINGS OF FACT,
CONCLUSIONS OF LAW AND ORDER